CF0000061380

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR,MP.

Criminal Appeal No. 2180 /97.

CRIMINAL APPEAL U/S.374(2) OF THE CODE OF CRIMINAL PROCEDURE-1973..

APPELLANTS (IN JAIL) : 1. Manaraj Ram S/o. Fundurram age 30 years, Occupation agriculture R/o. Vill- Ranaipara PS-Sitapur Distt- Sarguja, MP.

2. Mana Ram S/o. Fundurram age 35 years, Occupation agriculture, R/o. Vill- Ranaipara PS- Sitapur Distt- Sarguja, MP.

14324

ed on 15.10.97

by Shri Sunil Singh

Advocate

Rlo. A.R.

-Versus-

RESPONDENT. The State of M.P. through PS- Sitapur District Sarguja,MP.

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 2180/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2180 of 1997

Appellants : Maniraj Ram and another

Vs.

Respondent : State of Madhya Pradesh

Shri A.K. Prasad, learned counsel for the appellants.

Shri M.P.S. Bhatia, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT

(20.04.2006)

Per L.C. Bhadoo J

By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellants have questioned the legality and correctness of the judgment dated 11.09.1997 passed by First Additional Session Judge, Ambikapur in Session Trial No. 168/93 convicting them under sections 302/34 of the Indian Penal Code and sentencing each of them to undergo imprisonment for life.

2. Case of the prosecution in brief is that Bihani Bai PW-7 is the sister-in-law (brother's wife) of the accused/appellants and as the husband of Bihani Bai namely Dhaniram had died, accused/appellants wanted to take possession of the land of Bihani Bai. On the fateful day i.e. 15.4.1992 Bihani Bai along with her daughter Maheshwari went to the house of her

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	sister Somaribai and when they were sleeping in the house, in the intervening night of 15/16-4-1992 at twelve hours, accused/appellants went to the house of Somari Bai in village Koat (Ranaipara) and asked Nankuram as to why they had kept their sister in law in the house and she should be sent out. On hearing commotion Somari Bai (since deceased) came out of the house, on which accused/appellant Manraj asked his brother Manaram "what are you seeing, assault her". Thereafter, Manaram assaulted Somari Bai with wooden hammer on her head as a result of which she fell down and became unconscious. Blood was oozing from the injuries on head and right ear. Incident was seen by Bihani Bai and her daughter Maheshwari and thereafter the accused/appellants fled away from the place of occurrence. Matter was reported by Nankuram, husband of Somari Bai vide report Ex. P-11. On receiving this report Station House Officer of Police Station Sitapur registered crime No. 34/1992 under section 307/34 and 109 of the Indian Penal Code. Somari Bai was taken to the hospital at Sitapur for treatment where she succumbed to the injuries on 21.4.1992 at 10.30 p.m. Thereafter, merg intimation Ex. P-12 was sent to police station Sitapur and then offence was converted into section 302 of the IPC. Investigating Officer left for the scene of occurrence, after giving notice Ex. P-9 to the Panchas he prepared inquest report Ex. P-10 of the dead body of Somari Bai. Site plan Ex. P-8 was prepared by Halka Patwari. Injury report of Somari Bai which was prepared by Assistant Surgeon of Primary Health Centre, Sitapur, was taken into possession. Post mortem on the body of Somari Bai was conducted by Dr. K.K. Dutta PW-3 who prepared the post mortem report	

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of Ex. P-3 in which he opined that cause of death was coma due to injury over skull and the death was homicidal in nature. During investigation one blood stained sari of Somari Bai was taken into possession vide Ex. P-2. Blood stained and plain soil was taken into possession under Ex. P-14 from the place of occurrence, While in police custody accused Manaram gave memorandum of Ex. P-15 in pursuance of which he got recovered wooden hammer under P-16. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the court of Session Judge, Ambikapur from where learned Additional Session Judge, Ambikapur received the case on transfer for trial.

3. Prosecution in order to establish the charges against the accused/appellants examined as many as 10 witnesses. Statements of the accused/appellants were also recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution evidence appearing against them in the crime. They also examined DW-1 Jamuna Prasad in their defence.

4. Learned Additional Session Judge after hearing the arguments of counsel for the respective parties convicted and sentenced the accused/appellants as mentioned in paragraph one of this judgment.

5. As far as involvement of accused persons in the crime in question is concerned, Nankuram, husband of Somari Bai who lodged the report Ex. P-11 has already expired and therefore, he could not be examined

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before the trial Court. Conviction of the accused/appellants rests on the testimony of PW-6 Maheshwari and PW-7 Bihani Bai and recovery of wooden hammer at the instance of accused Manaram. As far as the involvement of accused/appellant Manraj in the crime in question is concerned, as per the first information report the allegation against him was that when Somari Bai came out of the house, he exhorted Manaram by saying " what are you seeing, assault her" on which accused Manaram who was holding wooden hammer assaulted Somari Bai on her head as a result of which she fell down. As per the prosecution case the allegation against Manaram is that he assaulted the deceased with wooden hammer and the allegation against Manraj is that he exhorted Manaram to assault Somari Bai.

PW-6 Maheshwari has stated in her evidence that on hearing commotion she woke up and saw that accused Manraj asked co-accused Manaram to assault Somari Bai on which accused Manaram assaulted her on head with wooden hammer as a result of which she died. In the cross examination she has stated that it is correct that night was dark and she and her mother were sleeping inside and Somari bai was sleeping in the courtyard. It is incorrect to say that she had not seen the incident. Bihani Bai PW-7 has also stated that accused persons were her brothers in law (Dewar) and they wanted to take her land and for that they used to threaten her saying that they would take her cow, bullock and agricultural land. She has further stated that when she went to the house of her sister, her brother-in-law was sleeping in the *parchhi* and she was sleeping along with her daughter inside the house. In the night at about 12 hours

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her and assaulted her sister with wooden hammer as a result of which she received injuries on her head. Similar is the evidence of Maheshwari Bai. The evidence of these two witnesses stands corroborated by the medical evidence given by PW-3 Dr. K.K. Dutta who has stated that on 22.4.1992 he conducted the post mortem on the body of Somari Bai, there were abrasions on the right side of the head in the size of 6 x ½ x 1 c.m. On opening of head it was found that there was clotted blood beneath the injury and there was fracture of left temporal bone, clotted blood was present. At the instance of the accused Manaram weapon of offence i.e. wooden hammer was seized under Ex. P-16. Therefore, from the above evidence assault by accused Manaram is established and to that extent we do not find any illegality or infirmity in the impugned judgment of the trial Court.

7. Learned counsel for the accused/appellants argued that from the evidence of the prosecution it is not established that the accused assaulted the deceased with an intention to cause her death. Moreover, as per the prosecution case, the dispute was between the accused and Bihani Bai and not with Somari Bai. He also argued that only two injuries were found on the body of Somari Bai and that too by wooden hammer.

8. On the other hand learned counsel for the respondent/State supported the impugned judgment of the trial Court.

9. In order to appreciate the arguments advanced by counsel for the parties we have perused the evidence on record.

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	10. As has been referred to earlier as per the evidence of Bihani Bai PW-7 accused came to the house of her sister-in-law in order to assault her but when Somari Bai came out of the house accused Manaram assaulted her and ran away. From the evidence available on record it is apparent that accused Manaram assaulted Somari Bai twice with wooden hammer in the intervening night of 15/16.4.1992 whereas Somari Bai died in the hospital on 21.4.1992 i.e. six days after the incident. 11. Considering the above facts and circumstances of the case looking to the nature of weapon, we are of the considered opinion that it cannot be inferred that the accused Manaram assaulted the deceased with intention to cause her death. In fact dispute was between accused persons and Bihani Bai but from the above evidence it can safely be inferred that while assaulting with wooden hammer the accused Manaram had knowledge that by assaulting with wooden hammer death of Somari Bai was likely to be caused. Therefore, offence against accused/appellant Manaram does not travel beyond section 304-II of the IPC. 12. In the result,appeal of accused/appellant Manaram partly succeeds. His conviction and sentence under section 302/34 of the IPC are set aside and instead he is convicted under section 304-II of the IPC and sentenced to undergo R.I. for nine years. As per the impugned judgment of the trial Court accused Manaram remained in jail from 20.04.1992 to 07.08.1992 and now he is detained since 11.09.1997. Thus accused Manaram is	

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	entitled for the set off of the aforesaid period against the sentence imposed on him. 13. Appeal of accused/appellant Manraj is allowed. He is acquitted of all the charges leveled against him. He be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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